Application No.:	09/785,783	Filing Date:	February 16, 2001
Confirmation No.:	3408		
First Named Inventor:	Robert A. Foster		
Assignee:	Financial Systems Technology (Intellectual Property) Pty. Ltd.		
Examiner:	Gort, Elaine L.	Art Unit:	3627
Attorney Docket No.:	M-9381 US		

San Jose, California
December 28, 2007

Via EFS-Web
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

Dear Sir:

Pursuant to 37 C.F.R. § 41.41, Appellant submits the present Reply Brief in Response to the Examiner's Answer mailed on October 31, 2007.

The Examiner's Comments on "Determining ..." Steps

The Examiner rejected Claims 1-38 under 35 U.S.C. § 103(a) as being unpatentable over Halbert, in view of Peterson. The Examiner relied on Halbert's col. 4, lines 25-29 and Peterson's col. 27, despite Halbert's disclosure, at col. 4, lines 25-29, in its entirety provides no disclosure of the "determining" steps in the limitations of Appellant's Claims 1-38, each of which reciting a billing cycle, production service instances and a pricing method:

> Featured Product: Any product or product variant identified for sale through a co-op. For purposes of this application, the term 'featured product' includes any

services which might be identified for sale through a co-op.

HTTP: The Hyper-Text Transfer Protocol.

The specific recitations of independent Claims 1, 9 and 26 are:

> 1.   A method for pricing transactions in real-time, the method comprising:

>> receiving a request for a real-time price quote for a transaction of a first account, the request being received at a first instance in time during a billing cycle;

>> determining a first production service, the first production service being a component of the transaction;

>> determining a count of first production service instances representing the first production service in the transaction;

>> determining a billable entity for the transaction, the billable entity comprising one or more related accounts, wherein the one or more related accounts includes the first account;

>> determining a total of the first production service instances associated with the one or more related accounts during the billing cycle up to the first instance in time, the total including the count of the first production service instances in the transaction;

>> determining a price applicable to the total of the first production service instances based on a pricing method; and

>> apportioning the price to the transaction based on the count of the first production service instances in the transaction.

> *   *   *

> 9.   A method for real-time pricing comprising:

>> receiving a request for a real-time price

quote for a transaction, the request being received at a first instance in time during a billing cycle, wherein the transaction comprises a number of first production service instances, each first production service instance relating to a first production service;

based on a pricing relationship, <u>determining a total count of production service instances consumed during the billing cycle up to the first instance in time;</u>

<u>determining a billable service appropriate for the first production service;</u>

<u>calculating a price for the first production service from a price table based on a first attribute for the billable service and the total count of production service instances consumed;</u> and

apportioning the price to the transaction based on the number of first production service instances in the transaction.

*   *   *

26.   A computer-readable storage medium having stored thereon computer instructions that, when executed by a computer, cause the computer to:

receive a request for a real-time price quote for a transaction, the request being received at a first instance in time during a billing cycle, wherein the transaction comprises a number of first production service instances, each first production service instance a first production service;

based on pricing relationship, <u>determine a total count of production service instances consumed during the billing cycle up to the first instance in time;</u>

<u>determine a billable service appropriate for the first production service; calculate a price for the first production service from a price table based on a first attribute for the billable service and the total count of production service instances consumed;</u>

Application No.: 09/785,783

> apportion the price to the transaction based on the number of first production service instances in the transaction; and

> provide the price as data to be included in determining service charges to a customer associated with the transaction.

In the Examiner's Answer, the Examiner merely repeats his previous comments in the Response to Arguments section of the Final Office Action. The Examiner's comments continue to disregard various limitations recited in Appellant's claims that are neither disclosed nor suggested by Halbert. For example, the term "production services" recited in each of Claims 1-38 is neither disclosed nor suggested in Halbert. Appellant's Specification, at page 34, lines 13-15, states that a "production service" is "akin to a bill of materials for a manufacturer in that each transaction can be defined by the production services that are required to build or provide the transaction." Therefore, unlike Appellant's claimed invention, Halbert does not determine "a first production service, [which is] a component of the transaction." Halbert teaches a pricing method based exclusively on the number of acceptable offers, not the "production services that are required to build or provide the transaction." See, e.g., Halbert, at col. 7, lines 51-54).

As another example, Appellant's Claims 1-38 recite "determining a total of the first production service instances associated with the one or more related accounts during the billing cycle up to the first instance in time" or "determining a total count of production service instances consumed during the billing cycle up to the first instance in time." In contrast, Halbert teaches that no transaction is carried out until a critical mass is met and not before the close of the co-op. See, e.g., Halbert's col. 9, lines 43-56.

Accordingly, Appellant respectfully submits that the "determining" steps of

Claims 1-38 are neither disclosed nor suggested by Halbert and Peterson.

The Examiner's Construction of the Term "Billing Cycle"

In Appellant's Appeal Brief, Appellant points out that Halbert's disclosure does not support the Examiner's reading of the claims on Halbert. For example, with respect to Claim 1's limitations:

> determining a total of the first production service instances associated with the one or more related accounts during the billing cycle up to the first instance in time, the total including the count of the first production service instances in the transaction;
>
> determining a price applicable to the total of the first production service instances based on a pricing method;

the Examiner states:

> Halbert discloses, for example in the abstract, that the sale has a defined start time and end time which the Examiner is construing to be a "billing cycle". When the sale ends a total of the number of services sold is inherently used in order to calculate the amount to be charged to the buyer's credit card account in order to obtain adequate funds. ... Halbert disclose the determining of a price based on a pricing method, for example in the abstract it discusses how the system uses a starting price and a product cost curve. In Halbert the cost is reduced as the number of goods/services purchased increases to take advantage of group buying discounting.

Appellant therefore points out that the Examiner's construction of "billing cycle" is inconsistent with the term's ordinary and customary meaning. If the Examiner construes the term "one or more related accounts" as a credit card account, then the "billing cycle" for such an account cannot be the "start time" and the "end time" of a

single transaction (as the Examiner construed above), but rather the time period during which transactions are allowed to accumulate in the credit card account. If that is the case, Halbert's price determination for a single transaction (as discussed in the Abstract and by the Examiner above) does not meet Claim 1's limitation "determining a price applicable to the total of the first production service instances based on a pricing method", as Halbert does not disclose or suggest determining a price for a transaction based on the total up-to-date transactions in the credit card account in the present billing cycle.

In response, in the Examiner's Answer, the Examiner states:

> Examiner notes that the scope of the claim is broad enough to encompass the scenario of only one charge for services being made to one account which Halbert discloses. In this scenario the billing cycle ends when the credit card account is charged for the purchase which includes service plans associated with items for sale. The billing cycle is not construed to be the billing cycle of the credit card company, it is the period of time before the credit card account is charged.

Therefore, the Examiner's construction of the term "billing cycle" -- i.e., not as the billing cycle of the credit card company, but as the "period of time before the credit card account is charged" -- is contrary to the ordinary and customary meaning of the term. However, the Examiner does not provide any justification for such a meaning for "billing cycle" over the customary meaning of "billing cycle" for a credit card company. Further, according to the Examiner, Halbert teaches only one charge is made to one account. Therefore, Appellant submits that Halbert's teaching does not meaningfully meet the limitation of Claims 1-38, such as "determining a total of the first production

service instances associated with the one or more related accounts during the billing

cycle up to the first instance in time" recited in Claim 1 and its dependent claims.

The Examiner's Comment Regarding the Nature of Halbert's Operations

The Examiner states:

> In response to applicant's argument that the
> reference fails to show certain features of applicant's
> invention, it is noted that the features upon which applicant
> relies (i.e., on line purchasing group) are not recited in the
> rejected claim(s). Although the claims are interpreted in
> light of the application, limitations from the specification
> are not read into the claims. (citation omitted).

Appellant respectfully submits that the on-line purchasing group operations

disclosed in Halbert is relevant to the determination under 35 U.S.C. § 103(a), i.e.,

determining whether or not the difference between Halbert's teaching and the claimed

subject matter is such that the subject matter as a whole would have been obvious to a

person having ordinary skill in the art. The fact that Appellant's Claims 1-38, which

pertain to a service provider pricing a transaction based on component production

services, is far removed from the operations of an on-line purchasing group suggests that

the claimed subject matter is unobvious from the combined teachings of Halbert and

Peterson. Accordingly, Appellant respectfully submits that Claims 1-38 are allowable

over the combined teachings of Halbert and Peterson.

Conclusion

For the reasons stated above, Appellant respectfully request that the Examienr's

rejections of Claims 1-38 under 35 U.S.C. § 103 be reversed. If the Examiner or the

Board has any questions regarding the above, the Examiner is requested to telephone the undersigned at (408) 392-9250.

      Fee Authorization: No fee is believed to be required. However, the Commissioner is hereby authorized to charge any additional fees or credit any overpayment associated with this communication to Deposit Account No. 50-2257.

Certificate of Transmission: I hereby certify that this correspondence is being transmitted to the United States Patent and Trademark Office (USPTO) via the USPTO's electronic filing system on December 28, 2007.
_____ 12/28/07
Attorney for Applicant(s)   Date of Signature

Respectfully submitted,

F—

Edward C. Kwok
Attorney for Appellant
Reg. No. 33,938

Law Offices of
MacPherson Kwok Chen & Heid LLP
2033 Gateway Place, Suite 400
San Jose, CA 95110
Tel: (408) 392-9250
Fax: (408) 392-9262

Application No.: 09/785,783